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January 8, 2016

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Via ECF

Hon. Charles R. Breyer
United States District Court
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Steering Committee Membership Application of David M. McClain in *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation, MDL 2672*

Dear Judge Breyer:

Over half a million consumers require immediate compensation for their harm, and Volkswagen has already admitted key facts. This uniquely urgent and sizeable MDL requires uniquely skilled and timely negotiation and settlement. For this reason, I respectfully submit my application as a Steering Committee member to immediately lead negotiation discussions with a commitment to resolve this case within the calendar year.

My work over the past forty years has been to settle complex cases involving tens of thousands of victims. I am honored that many judges, justices and mediators have come to recognize me as one of our nation's best negotiators upon whose word and ethics can be relied. For example, after observing me negotiate over thirty complex settlements totaling billions of dollars with the country's largest insurance companies over the last twelve years, Judge Charles B. Renfrew (Ret.), who had observed all these negotiations as a Future Claimants' Representative, attested to the following:

"I just want to tell you I thought your negotiations with [national insurance company] was remarkable. I've never seen better negotiations. You were able to establish credibility with counsel from the other side, but what you did is, each of you had the responsibility of negotiating with each side and coming together to a resolution. Each of you had the duty and responsibility to try to come to resolution. You did it beautifully. I just have never seen it done better. I just thank you for the number of millions of additional funds we receive as a result of your incredible negotiations. Very, very, very impressive. I have just never seen better." Hon. Charles B. Renfrew (Ret.), (415) 397-3933

Additionally, Judge Daniel Weinstein (Ret.), in front of whom I have negotiated often over the past twenty-five years, at times on behalf of hundreds of plaintiffs, has stated:

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“David McClain is one of the top negotiators I have encountered in thirty years of mediating over 3000 cases. Honest, strategically brilliant, and in the end, sensible and solid.” Hon. Daniel Weinstein (Ret.), dweinstein@jamsadr.com (415) 982-5267

Similarly, I have mediated and arbitrated numerous complex product liability and insurance coverage cases throughout the last ten years before Judge William J. Cahill (Ret.), who previously served on the California Superior Court for nearly decade. He has said the following of my work:

“David McClain is one of the best. He always comes prepared in the way that only elite lawyers do. He negotiates from strength, and he has an earned reputation of backing up his demands with facts and trial skill. He is highly respected by both the plaintiffs’ and defense bars, and he would be an ideal negotiator in the Volkswagen MDL.”

Judge William J. Cahill (Ret.), wcahill@jamsadr.com (415) 982-5267

Many judges and mediators, in addition to those quoted above, have seen my work closely for years and can attest to my skills as a negotiator and litigator.¹ As lead negotiator on behalf of approximately forty separate plaintiffs’ firms, I personally negotiated nearly \$4 billion in settlements for the Chapter 11 reorganizations and insurance coverage suits. For example, in the coverage action *Western Mac Arthur and Mac Arthur Co. v. United States Fidelity & Guaranty Co.*, CA Sup. Ct. Case No. 721595-7, I personally negotiated over two \$1 billion settlements with two insurance companies (USF&G and Hartford) as part of the larger *In re Western Asbestos Company, et al.*, No. 02-46284 T (Bankr. 2003), which I settled cumulatively for over \$2.25 billion. Similarly, I personally settled *In re J.T. Thorpe, Inc., et al.*, No. LA02-14216-BB (Bankr. 2006) for over \$300 million for thousands of claimants with seven separate insurance companies. I settled actions related to *In re Thorpe Insulation Co., et al.* No. 2:07-bk-19271-BB (Bankr. 2008) for over \$650 million with fifteen separate insurance companies for thousands of present and future claimants. On behalf of a Plaintiffs’ Committee, I settled the *In re Plant Insulation Company*, No. 09-31347 TEC (Bankr. 2012) actions for over \$335 million. In these above mediations and countless others, I settled numerous disputes in front of mediators including David Geronemus, Esq., Peter H. Woodin, Esq., Justice Edward A. Panelli (Ret.), Hon. Peter D. Lichtman (Ret.), and Martin Quinn, Esq.

In addition to these bankruptcy settlements, I have personally negotiated thousands of individual and group settlements on behalf of catastrophic product liability victims in complex litigation for over \$1 billion in total. For example, in *In re: Complex Asbestos Litigation*, CA Case No. 607734-9A (1991), I was the elected Plaintiffs’ Coordinator for at least twenty plaintiff

¹ Hon. Edward Milton Chen, United States District Court Judge, emccrd@cand.uscourts.gov; Hon. Henry Earl Needham, Jr., Associate Justice, State of California Court of Appeal, 1st Appellate District, (415) 865-7300; Hon. Ken M. Kaiwaichi (Ret.), kkawaichi@jamsadr.com (925) 938-5060; Hon. David A. Garcia (Ret.), dgarcia@jamsadr.com; Hon. Richard Hodge (Ret.), (510)843-1669; Hon. Ronald M. Sabraw (Ret.), rsabraw@jamsadr.com; Hon. Alex Saldamando (Ret.), (415) 772-0900; Hon. Steven Alexander Brick (Ret.), sbrick@jamsadr.com.

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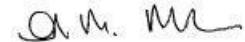
firms during all pretrial matters in the consolidation of 541 individual asbestos victims' cases against over 100 defendants. All but six cases settled before trial. Additionally, my law partner Steven Kazan and I acted on behalf of our firm as co-lead counsel in the *Ahearn, et al. v. Fibreboard Corporation, et al.* Civil Action No. 6:93cv526, E.D.Tex., upheld in *Ahearn v. Fibreboard Corp.*, 162 F.R.D. 505 (E.D.Tex.1995); overturned in *Ortiz v. Fibreboard Corp.* 527 U.S. 815 (1999) (Breyer, J., dissented), which, despite being overturned, still successfully achieved over \$3 billion in settlement funds for over 100,000 victims. That class action was uniquely settlement-centered and resulted in an extremely successful settled resolution.

I have had outstanding success as a trial attorney of complex cases with a stellar record of seven- and eight-figure verdicts in individual cases. My firm has successfully litigated against Volkswagen in product liability actions since 1982, with our most recent case settling in 2014. My firm has also worked well with Kenneth Feinberg's firm since the 1980s in a variety of asbestos bankruptcy trust matters. Furthermore, I served as a sitting sworn settlement master for Alameda Courts for over ten years, where I excelled in resolving the most difficult disputes after multiple other settlement attempts had failed.²

I am able to devote my full time to this case as needed. My Oakland-based firm of twenty-three attorneys and approximately eighty employees, including German speaking staff, has the resources and expertise to engage in the highest quality of written discovery, deposition practice and litigation work, all while minimizing fees and expenses. Additionally, both my firm and I work cooperatively in committee and group settings.

We have not contacted other firms to prematurely form alliances, as we believe that is best left to your Honor and we feel comfortable working with all of the firms who have applied and anyone you may appoint. I will, however, recommend as Plaintiffs' Lead or Co-Lead Counsel Joseph Cotchett of Cotchett Pitre & McCarthy, as we have worked together well for decades. Mr. Cotchett tells me he supports my membership on the Steering Committee as well. Additionally, I support for appointment to Steering Committee Jack Lee, my co-counsel in this case, of the firm Minami Tamaki, an excellent minority-owned class action firm. His firm recommends my appointment to the Steering Committee as well. As highlighted in Jack Lee's application letter to your Honor, we represent exceptional potential class representatives including Dr. John Balmes, the physician member of the California Air Resources Board ("CARB") and an expert in the negative health impacts of diesel particulate, and George Torgun and Sarah Burt, both environmental attorneys at San Francisco Baykeeper and Earthjustice, respectively, and experts in the Clean Air Act and the impacts of the pollution caused by Volkswagen. I look forward to serving in this matter.

Very truly yours,



David M. McClain

Attachment

cc: All counsel via ECF

² Giza Lewis, the Alameda County Trial Court Coordinator, can attest to my work as a Settlement Master at the Alameda County court. She may be reached at (510) 627-4782.